



Federal Communications Commission
Washington, D.C. 20554

June 24, 2009

DA 09-1403

Scott A. Byers
Vice President, Finance and General Counsel
Wilkes University
84 W. South Street
Wilkes-Barre, PA 18766

Dear Mr. Byers:

On March 13, 2007, Wilkes University (Wilkes), licensee of Educational Broadband Service (EBS) Station WNC539, filed a "Request for Waiver" and "Correction of 2005 Renewal Application."¹ Wilkes advises the Commission that its last renewal application was factually inaccurate and requests a waiver of former Section 74.932(d) of the Commission's Rules.² For the reasons stated below, we grant the request for waiver of former Section 74.932(d) of the Commission's Rules, and admonish Wilkes for filing incorrect information in its 2005 Renewal Application.

Wilkes received an authorization for Station WNC539 on February 17, 1995.³ On January 10, 2005, Wilkes filed an application for renewal of license of Station WNC539.⁴ In its application, Wilkes reported that WNC539 was serving approximately 1,100 persons and that 90% of the programming on WNC539 was instructional and cultural in nature.⁵ Wilkes now reports that these statements were incorrect and the station had, in fact, been dark for more than one year prior to the filing of the last renewal application.⁶ Wilkes requests a waiver of former Section 74.932(d) of the Commission's Rules to allow it to keep its license notwithstanding the fact that the station was off the air more than one year prior to January 10, 2005, the date the rule was abolished.⁷ Wilkes argues that grant of its waiver request would be consistent with other waivers of the same rule that have been granted.⁸ Wilkes claims that the erroneous claim resulted from the fact that Wilkes reported service that was distributed using closed circuit television facilities.⁹

An applicant seeking a waiver of the Commission's Rules must demonstrate either that: (i) the underlying purpose of the rule(s) will not be served or would be frustrated by application to the instant

¹ Letter from Scott A. Byers to Federal Communications Commission, Wireless Telecommunications Bureau, Broadband Division (Mar. 13, 2007) (Request).

² 47 C.F.R. § 74.932(d) (2005).

³ File No. BPIF-19930122DB.

⁴ File No. 0002030531.

⁵ *Id.*, FCC Form 330-R, Response to Question 11.

⁶ Request at 1-2.

⁷ Request at 1-2.

⁸ Request at 3-4.

⁹ Request at 2.

case, and that a grant of the waiver would be in the public interest;¹⁰ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ Under the rule that was in effect prior to January 10, 2005, former Section 74.932(d) of the Commission's Rules required that an EBS license be forwarded to the Commission for cancellation in case of permanent discontinuance of operation.¹² A station that had not operated for one year was considered to have permanently discontinued operation.¹³ On July 29, 2004, the Commission released the *BRS/EBS R&O & FNPRM* that fundamentally restructured the band to provide BRS and EBS licensees with greater flexibility, and took numerous steps to promote competition, innovation, and investment in wireless broadband services and educational services.¹⁴ Among other actions, the *BRS/EBS R&O & FNPRM* eliminated the discontinuance of service rules for the new BRS and EBS.¹⁵ The discontinuance of service rules no longer apply to non-common carrier BRS and EBS licensees. Because the discontinuance of service rules applied at the time for which the applicants are seeking a waiver, however, the licensees require a waiver in order to avoid forfeiting their licenses.

We will grant Wilkes' request for waiver of former Section 74.932(d) of the Commission's Rules. We have granted a series of waivers of that rule in order to facilitate the transition to the new rules applicable to EBS.¹⁶ We agree with Wilkes that it is similarly situated to other EBS licensees that have received waivers.

We are deeply concerned, however, that Wilkes filed a renewal application claiming that the station was in operation and providing educational and cultural programming when the station was in fact off the air. Because it is vital that all licensees and applicants provide fully accurate information in all filings with the Commission, we admonish Wilkes for filing an inaccurate application.

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² 47 C.F.R. § 74.932(d).

¹³ *Id.*

¹⁴ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

¹⁵ *Id.*, 19 FCC Rcd at 14255-57 ¶¶ 231-239.

¹⁶ See Wireless Telecommunications Bureau's Broadband Division Grants Request for Waiver of EBS Discontinuance of Service Rule, *Public Notice*, 21 FCC Rcd 14485 (WTB BD 2006); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of BRS and EBS Discontinuance of Service Rules, *Public Notice*, 21 FCC Rcd 10079 (WTB BD 2006); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of BRS and EBS Discontinuance of Service Rules, *Public Notice*, 20 FCC Rcd 5275 (WTB BD 2005); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of MDS and ITFS Discontinuance of Service Rules, *Public Notice*, 20 FCC Rcd 54 (WTB BD 2005); Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of MDS and ITFS Discontinuance of Service Rules, *Public Notice*, 19 FCC Rcd 18752 (WTB BD 2004).

Scott A. Byers

Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 74.932(d) of the Commission's Rules, 47 C.F.R. § 74.932(d), that the request for waiver of Section 74.932(d) of the Commission's Rules filed by Wilkes University on March 13, 2007 IS GRANTED, and Wilkes University IS ADMONISHED for its inaccurate response to Question 11 in the 2005 Renewal Application.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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